IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 814 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANTOSHBHAI BANSIBHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 814 of 2003

MR RJ GOSWAMI for Petitioner No. 1

MR RM CHAUHAN Ld. APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/11/2003

ORAL JUDGEMENT

By way of filing this petition the petitioner has challenged the order passed by the Deputy Police

Commissioner, Baroda city on 16.10.2002 under sec. 56(B) of the Bombay Police Act, 1951 directing removal of the petitioner from district of Baroda and other adjoining districts. The petitioner has also challenged the order passed by the Appellate Authority in an appeal filed by the petitioner under sec. 60 of the Bombay Police Act against the said order dated 16.10.2002 passed by the Deputy Police Commissioner, Baroda City. The appellate authority vide order dated 22.3.2003 was pleased to reject the appeal of the petitioner filed as aforesaid.

Brief facts as disclosed from the record indicate that the show cause notice came to be issued against the petitioner by Deputy Police Commissioner, Baroda city on 14.2.2002 under sec. 59 of the Bombay Police Act, 1951. Accordingly, the petitioner was asked to show cause as to why he should not be removed from the area of district Baroda and other adjoining districts for two years on account of nefarious activity mentioned in the notice. It has been alleged in the notice that petitioner is of strong headed violent and quarrelsome by nature and is in habit of keeping deadly weapons with him. It is also alleged that the petitioner is indulged in beating and administering threats to the people and causes physical injuries to the innocent citizen and identifies himself as Don of the area. It is also alleged that the petitioner is in habit of extorting money from innocent citizen by threatening them. It is mentioned in the notice that these nefarious activities are carried on in the area of Navapura, Kahar Mahollow, Marathi Mahollow, Rabariwas, Khatakivas, Vaghrivas etc. It is also alleged that two crimes are registered against the petitioner being CR NO. 68/2001 and 229/2001 relating to body and property under chapter-16 and 17 of IPC. The notice contains substance of the statements of witnesses recorded in-camera by the authority and those statements referred to the incidents occurred on 17.12.2001, 2.12.2001 and 25.12.2001, wherein violent and head strong propensity of the petitioner and nefarious activities are disclosed. After the notice was served, the petitioner appeared before the Police Commissioner, Baroda and on 16.10.2002 the order impugned in this petition came to be passed by the Deputy Police Commissioner, Southern Zone, Baroda City.

Ld. advocate Mr. RJ Goswami for the petitioner and ld. APP Mr Chauhan for the respondents were heard at length. Affidavit in reply filed by the competent authority under sec. 56(B) of the Bombay Police Act as placed on record by ld. APP is also taken into consideration.

Out of various contentions raised by the petitioner and controverted by ld. APP this matter can be disposed of on the ground whether the order is required to be quashed and set aside on the ground of vagueness of notice under sec. 59 of the BP Act, 1951. It is urged that in the notice issued to the petitioner on 14.2.2002 under sec. 59 of the BP Act, 1951 though the competent authority mentioned the area in which the petitioner alleged to have carried on his nefarious activities but it is not mentioned that for what period the petitioner carried on such activities. It is contended that notice must contain the area in which the nefarious activities were carried on by the externee and the period for which such activities were carried on. Non mention of this vital aspect in the notice would prejudice the defence of the externee especially when externee might have a defence of alibi. This contention is vehemently objected by ld. APP on the ground that the date on which the incidents occurred as per the in-camera statements are mentioned in the notice against the petitioner under sec. 59 of the BP Act, 1951.

From the rival contentions and from the law as established, it is clear that before the proposed externee can be said to have been given reasonable opportunity to tender explanation, all material allegation of general nature have to be pointed out to him. This is so because in the proceedings under sec. 56 of the BP Act, 1951, the petitioner has no access to the names, addresses and identity of the witnesses who might have narrated against him. The statute therefore, enjoins upon the authority to give proper show cause notice. True, it is that the externing authority only require to point out to the proposed externee the general nature of material allegations against him in the show cause notice and on that charges the proposed externee has to be given an opportunity to tender his explanation. If the said show-cause notice is vague , the whole proceedings resulting in passing of the order of externment vitiates. IN this respect, it is essential requirement that to tender reasonable explanation to the allegations, the competent authority acting under sec. 59 of the BP Act, 1951 must indicate the area in which the proposed externee carried on his nefarious activities and period for which he carried on such activities. If these two vital aspects are not mentioned in the show cause notice under sec. 59 of the BP Act, 1951, the notice becomes vague because it deprives of the proposed externee to tender reasonable explanation. This view is established by the decision of this court in the matter

of Kathi Harsur Rukhad vs. State of Gujarat and others, as reported in 1986(1) GLR p. 682 and in the matter of Rajput Ranjitsing Jatubha vs. Vinay Vyas, Sub-Divisional Magistrate, Palanpur and ors., as reported in 1986(1) GLR p. 478 and third in the matter of Vikram Maya Maiya vs. State of Gujarat and anr., as reported in 1991(2) GLR p. 1210. All the three decisions are based on the law laid down by the Apex Court in the matter of The State of Gujarat and anr., vs. Mehbubkhan Usmankhan, as reported in AIR 1968 SC 1468. In the present case also, while going through the notice carefully, though area in which the proposed externee executed his nefarious activities are mentioned but in the first part of the notice, the period for which such nefarious activities were carried on is not mentioned. Though the notice contains dates on which the unreported incidents revealed through in-camera statements are mentioned, but the principle as enunciated by the above decisions makes it clear that the period for which along with the area in which nefarious activities were carried on must generally be stated by the authority acting under sec. 59 of the BP Act, 1951. The order of externment passed by the Deputy Police Commissioner, Baroda City as well as the order passed by the Appellate Authority on 22.3.2003 are required to be quashed and set aside on this ground alone.

In the result, this special criminal application is allowed. The order impugned in this special criminal application passed by Deputy Police Commissioner, Vadodara city on 16.10.2002 removing the petitioner from the district Baroda and other adjoining districts mentioned in the order as well as the order passed by the Appellate Authority in appeal on 22.3.2003 are quashed and set aside. Rule is made absolute with no order as to costs. DS permitted.

(J.R. VORA, J.)

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